

Rules of
**Department of Economic
Development**
Division 140—Division of Finance
Chapter 27—Association Trust Powers

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**Title 4—DEPARTMENT OF
ECONOMIC DEVELOPMENT
Division 140—Division of Finance
Chapter 27—Association Trust Powers**

4 CSR 140-27.010 Trust Powers

PURPOSE: By virtue of section 403 of the Depository Institutions Deregulation and Monetary Control Act of 1980, federal savings and loan associations were granted general trust powers. This regulation allows state-chartered savings and loan associations to engage in general trust powers in parity with federal savings and loan associations and also prescribes procedures for the acquisition, exercise and termination of trust powers for state-chartered associations.

(1) As used in this regulation, unless the context clearly requires otherwise, the following terms shall have the meanings prescribed:

(A) Account means the trust, estate or other fiduciary relationship which has been established with an association;

(B) Fiduciary means an association undertaking to act alone, or jointly with others, primarily for the benefit of another in all matters connected with its undertaking and includes trustee, executor, administrator, guardian, receiver, managing agent, registrar of stocks and bonds, escrow, transfer or paying agent, trustee of employee pension, welfare and profit-sharing trusts and any other similar capacity;

(C) Fiduciary records means all matters which are written, transcribed, recorded, received or otherwise come into the possession of an association and are necessary to preserve information concerning the actions and events relevant to the fiduciary activities of an association;

(D) Guardian means the guardian, conservator or committee, by whatever name employed by local law, of the estate of an infant or an individual over whose estate a court has taken jurisdiction, other than under bankruptcy or insolvency laws;

(E) Investment authority means the responsibility conferred by action of law or a provision of an appropriate governing instrument to make, select or change investments, review investment decisions made by others or to provide investment advice or counsel to others;

(F) Local law means the law of Missouri or other jurisdiction governing the fiduciary relationship;

(G) Managing agent means the fiduciary relationship assumed by an association upon the creation of an account which names the

association as agent and confers investment discretion upon the association;

(H) State-chartered corporate fiduciary means any bank or corporation or other legal entity authorized to exercise trust powers pursuant to Chapter 362, RSMo;

(I) Trust department means that group or groups of officers and employees of an association to whom are assigned the performance of fiduciary services by the association; and

(J) Trust powers means the power to act in any fiduciary capacity authorized to federal associations by section 403 of the Depository Institutions Deregulation and Monetary Control Act of 1980, P.L. No. 96-221, 94 Stat. 132, 12 U.S.C. section 1464(n). Powers under that Act include the authority to act as trustee, executor, administrator, guardian, receiver, managing agent, registrar of stocks and bonds, escrow, transfer and paying agent, trustee of employee pension, welfare and profit-sharing trusts or in other fiduciary capacity which state-chartered corporate fiduciaries exercise under local law.

(2) Trust Powers.

(A) An association may exercise trust powers through a trust department provided the director first approves an application which indicates which trust services it wishes to offer and provides information which the director deems necessary to make determinations under subsection (2)(B).

(B) In addition to any other facts or circumstances deemed proper, the director, in passing upon an application to exercise trust powers, will give consideration to the following:

1. The financial condition of the association;
2. The need for fiduciary services in the communities served by the association and the probable volume of such fiduciary business available to the association;
3. The general character and ability of the management of the association;
4. The nature of the supervision to be given to the fiduciary activities, including the qualifications, experience and character of the proposed officer or officers of the trust department; and
5. Whether the association has available legal counsel to advise and pass upon fiduciary matters whenever necessary.

(3) Consolidation or Merger of Two (2) or More Associations. Where two (2) or more associations consolidate or merge, and any one (1) of such associations, prior to such consolidation or merger, has received a permit from the director to exercise trust powers

which permit is in force at the time of the consolidation or merger, the rights existing under such permit pass to the resulting association, and the resulting association may exercise such trust powers in the same manner and to the same extent as the association to which such permit was originally issued; and no new application to continue to exercise such powers is necessary. However, when the name or charter number of the resulting association differs from that of the association to which the right to exercise trust powers was originally granted, the director will issue a certificate to that association showing its right to exercise the trust powers theretofore granted to any of the associations participating in the consolidation or merger.

(4) Administration of Trust Powers.

(A) Sets forth—

1. Responsibility of the board of directors. The board of directors is responsible for the proper exercise of fiduciary powers by the association. All matters pertinent thereto, including the determination of policies, the investment and disposition of property held in a fiduciary capacity and the direction and review of the actions of all officers, employees and committees utilized by the association in the exercise of its fiduciary powers, are the responsibility of the board. In discharging this responsibility, the board of directors may assign, by action duly entered in the minutes, the administration of such of the association's trust powers as it may consider proper to assign to such director(s), officer(s), employee(s) or committee(s) as it may designate; and

2. Administration of accounts. No fiduciary account shall be accepted without the prior approval of the board or of the director(s), officer(s) or committee(s) to whom the board may have assigned the performance of that responsibility. A written record shall be made of such acceptances and of the relinquishment or closing out of all fiduciary accounts. Upon the acceptance of an account for which the association has investment responsibilities, a prompt review of the assets shall be made. The board shall also ensure that at least once during every calendar year thereafter, and within fifteen (15) months of the last review, all of the assets held in or held for each fiduciary account for which the association has investment responsibilities are reviewed to determine the advisability of retaining or disposing of such assets. The board of directors should act to ensure that all investments have been made in accordance with the terms and purposes of the governing instrument.

(B) Use of Other Association Personnel. The trust department may utilize personnel

and facilities of other departments of the association, and other departments of the association may utilize personnel and facilities of the trust department only to the extent not prohibited by law.

(C) Compliance with Federal and State Securities Laws. Every association exercising trust powers shall adopt written policies and procedures to ensure that federal and state securities laws are complied with in connection with any decision or recommendation to purchase or sell any security. Such policies and procedures, in particular, shall ensure that the association's trust departments shall not use material inside information in connection with any decision or recommendation to purchase or sell any security.

(D) Legal Counsel. Every association exercising fiduciary powers shall designate, employ or retain legal counsel who shall be readily available to pass upon fiduciary matters and to advise the association and its trust department.

(E) Bonding. In addition to the minimum bond coverage required by section 369.114, RSMo, directors, officers and employees of an association engaged in the operation of a trust department shall acquire such additional bond coverage as the director may require.

(5) Books and Accounts.

(A) General. Every association exercising trust powers shall keep its fiduciary records separate and distinct from other records of the association. All fiduciary records shall be so kept and retained for such time as to enable the association to furnish such information or reports with respect thereto as may be required by the director. The fiduciary records shall contain full information relative to each account.

(B) Record of Pending Litigation. Every association shall keep an adequate record of all pending litigation to which it is a party in connection with its exercise of trust powers.

(6) Audit of Trust Department. At least once during each calendar year, the association's trust department shall be audited in a manner consistent with section 369.334, RSMo. A copy of the report of the audit shall be filed promptly with the director. Trust department audits may be made as a part of the annual audits required by section 369.334, RSMo.

(7) Funds Awaiting Investment or Distribution.

(A) General. Funds held in a fiduciary capacity by an association awaiting investment or distribution shall not be held uninvested or undistributed any longer than is rea-

sonable for the proper management of the account.

(B) Use by Association in Regular Business.

1. Funds held in trust by an association, including managing agency accounts, awaiting investment or distribution may, unless prohibited by the instrument creating the trust or by local law, be deposited in other departments of the association, provided that the association shall first set aside under control of the trust department as collateral security—

A. Direct obligations of the United States or other obligations fully guaranteed by the United States as to principal and interest;

B. Readily marketable securities of the classes in which state chartered corporate fiduciaries are authorized or permitted to invest trust funds under the laws of this state; or

C. Other readily marketable securities as the director may determine.

2. Collateral securities or securities substituted therefore as collateral shall at all times be at least equal in face value to the amount of trust funds so deposited, but such security shall not be required to the extent that the funds so deposited are insured by the Federal Deposit Insurance Corporation.

3. Any funds held by an association as fiduciary awaiting investment or distribution and deposited in other departments of the association shall be made productive.

(8) Investment of Funds Held as Fiduciary.

(A) Private Trusts. Funds held by an association in a fiduciary capacity shall be invested in accordance with the instrument establishing the fiduciary relationship and local law. When such instrument does not specify the character or class of investments to be made and does not vest in the association, its directors, or its officers investment discretion in the matter, funds held pursuant to such instrument shall be invested in any investment in which state chartered corporate fiduciaries may invest under local law.

(B) Court Trusts. An association acting as fiduciary under appointment by a court must make all investments of funds of such accounts under an order of that court, except where greater discretion in investments is permitted by the laws of this state or by the order of that court. Such orders in either case shall be preserved with the fiduciary records of the association.

(C) Collective Investment of Trust Funds. The collective investment of funds received or held by an association as fiduciary is governed by section (12) of this regulation.

(9) Self-Dealing.

(A) Purchase of Obligations, etc., from Association. Unless lawfully authorized by the instrument creating the relationship or by court order or local law, funds held by an association as fiduciary shall not be invested in obligations of, or property acquired from, the association or its directors, officers or employees or individuals with whom there exists such an interest, as might affect the exercise of the best judgment of the association in acquiring the property, or in stock or obligations of, or property acquired from, affiliates of the association or their directors, officers or employees.

(B) Sale or Transfer of Trust Assets to Association. Property held by such an association as fiduciary shall not be sold or transferred, by loan or otherwise, to the association or its directors, officers or employees, or to individuals with whom there exists such a connection, or organizations in which there exists such an interest, as might affect the exercise of the best judgment of the association in selling or transferring such property, or to affiliates of the association or their directors, officers or employees, except—

1. When lawfully authorized by the instrument creating the relationship or by court order or by local law;

2. In cases in which the association has been advised by its counsel in writing that it has incurred as fiduciary a contingent or potential liability and desires to relieve itself from such liability, in which case such a sale or transfer may be made with the approval of the board of directors and the director, provided that in all such cases the association, upon the consummation of the sale or transfer, shall make reimbursement in cash at no loss to the account;

3. As provided in the laws and regulations governing collective investments; and/or

4. When required by the director.

(C) Transactions Between Accounts.

1. An association may sell assets held by it as fiduciary in one (1) account to itself as fiduciary in another account if the transaction is fair to both accounts and if such transaction is not prohibited by the terms of any governing instrument or by local law.

2. An association may make a loan to an account from the funds belonging to another such account, when the making of such loans to a designated account is authorized by the instrument creating the account from which such loans are made, and is not prohibited by local law and the terms of the transaction are fair to all accounts.

3. An association may make a loan to an account and may take as security therefor

assets of the account, provided such transaction is fair to such account and is not prohibited by local law.

(D) Investment in Stock of Association. Except as provided in subsection (7)(B) of this regulation, funds held by an association as fiduciary shall not be invested by the purchase of stock or obligations of the association or its affiliates unless authorized by the instrument creating the relationship or by court order, provided, that if the retention of stock or obligations of the association or its affiliates is authorized by the instrument creating the relationship or by court order, it may exercise rights to purchase its own stock or securities convertible into its own stock when offered *pro rata* to stockholders. When the exercise of rights or receipt of a stock dividend results in fractional share holdings, additional fractional shares may be purchased to complement the fractional shares so acquired. In elections of directors, an association's share held by the association as sole trustee, whether in its own name as trustee or in the name of its nominee, may not be voted by the registered owner unless, under the terms of the trust, the manner in which such shares shall be voted may be determined by a donor or beneficiary of the trust and the donor or beneficiary actually directs how the shares will be voted.

(10) Custody of Investments.

(A) Segregation of Trust Assets and Joint Custody. The investments of each account shall be kept separate from the assets of the association, shall be placed in the joint custody or control of not fewer than two (2) of the officers or employees of the association designated for that purpose either by the board of directors of the association or by one (1) or more officers designated by the board of directors of the association, and all such officers and employees shall be adequately bonded. To the extent permitted by law, an association may permit the investments of a fiduciary account to be deposited elsewhere.

(B) Segregation of Accounts. The investments of each account shall be either—

1. Kept separate from those of all accounts, except as provided in section (12) of this regulation; or
2. Adequately identified as the property of the relevant accounts.

(11) Compensation of Association.

(A) General. If the amount of the compensation for acting in a fiduciary capacity is not provided for in the instrument creating the fiduciary relationship or otherwise agreed to by the parties, an association acting in such capacity may charge or deduct a reasonable

compensation for its services. When the association is acting in a fiduciary capacity under appointment by a court, it shall receive such compensation as may be allowed or approved by that court.

(B) Officer or Employee of Association as Co-Fiduciary. No association shall permit, except with the specific approval of its board of directors, any of its officers or employees, while serving as such, to retain any compensation for acting as a co-fiduciary with the association in the administration of any account undertaken by it.

(C) Bequests or Gifts to Trust Officers and Employees. No association shall permit an officer or employee engaged in the operation of its trust department to accept a bequest or gift of trust assets unless the bequest or gift is directed or made by a relative or is approved by the board of directors of the association.

(12) Collective Investment. Funds held by an association as fiduciary may be held in—

(A) A common trust fund maintained by the association exclusively for the collective investment and reinvestment of moneys contributed thereto by the association in its capacity as trustee, executor, administrator, guardian or custodian under the Uniform Gifts to Minors Law, Chapter 404, RSMo; or

(B) A fund consisting solely of assets of retirement, pension, profit sharing, stock bonus or other trusts which are exempt from federal income taxation under the *Internal Revenue Code*.

(13) Surrender of Trust Powers.

(A) Any association which has been granted the right to exercise trust powers and which desires to surrender such rights shall file with the director a certified copy of the resolution of its board of directors signifying such desire.

(B) Upon receipt of such resolution, the director shall make an investigation and if it is satisfied that the association has been discharged from all fiduciary duties which it has undertaken, it shall issue a certificate to such association certifying that it is no longer authorized to exercise fiduciary powers.

(C) Upon issuance of such a certificate by the director, an association shall no longer be subject to the provisions of these regulations, and shall not exercise thereafter any of the powers granted by these regulations without first applying for and obtaining new authorization to exercise such powers.

(14) Effect on Trust Accounts in Event of Takeover of Association by Director.

(A) Takeover of Association by Director. Whenever the director, pursuant to sections

369.339 and 369.344, RSMo, takes over an association s/he, pursuant to the order of the circuit court of the county in which the principal office of the association is located, shall proceed to close such of the association's trust accounts as can be closed promptly and transfer all other such accounts to substitute fiduciaries.

(B) Voluntary Dissolution. Whenever an association exercising trust powers is placed in voluntary dissolution, the director shall, pursuant to Chapter 369, RSMo, proceed at once to liquidate the affairs of the trust department as follows;

1. All trusts and estates over which a court is exercising jurisdiction shall be closed or disposed of as soon as practicable in accordance with the order or instructions of such court; and

2. All other accounts which can be closed promptly shall be closed as soon as practicable and final accounting made therefor, and all remaining accounts shall be transferred by appropriate legal proceedings to substitute fiduciaries.

(15) Revocation of Trust Powers.

(A) In addition to the other sanctions available, if, in the opinion of the director, an association is unlawfully or unsoundly exercising, has unlawfully or unsoundly exercised, or has failed to exercise for a period of five (5) consecutive years, the powers granted by this regulation or otherwise fails or has failed to comply with the requirements of this rule, the director may issue and serve upon the association a notice of intent to revoke the authority of the association to exercise the powers granted by this regulation. The notice shall contain a statement of the facts constituting the alleged unlawful or unsound exercise of powers, failure to exercise powers or failure to comply and shall fix a time and place at which a hearing will be held to determine whether an order revoking authority to exercise such powers should issue against the association.

(B) Such hearing shall be conducted in accordance with the provisions of 4 CSR 140-18.010 and shall be fixed for a date not earlier than thirty (30) days and not later than sixty (60) days after service of such notice unless an earlier or later date is set by the director at the request of an association so served.

(C) Unless the association so served shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the revocation order. In the event of such consent or if, upon the record made at any such hearing, the



director shall find that any allegation specified in the notice of charges has been established, the director may issue and serve upon the association an order prohibiting it from accepting any new or additional trust accounts and revoking authority to exercise any and all powers granted by this regulation except that such order shall permit the association to continue to service all previously accepted trust accounts pending their expeditious divestiture or termination.

(D) A revocation order shall become effective not earlier than the expiration of thirty (30) days after service of such order upon the association so served (except in the case of a revocation order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable, except to such extent as it is stayed, modified, terminated or set aside by action of the director or the Missouri Savings and Loan Commission or reviewing court.

AUTHORITY: sections 369.144 and 369.299, RSMo 1986. This rule previously filed as 4 CSR 260-15.010. Original rule filed May 12, 1981, effective Aug. 13, 1981. Amended: Filed Nov. 4, 1986, effective Jan. 30, 1987. Changed to 4 CSR 140-27.010, effective July 6, 1994. Amended: Filed Nov. 8, 1994, effective March 30, 1995.*

**Original authority: 369.144, RSMo 1971, amended 1982, 1983, 1984, 1989, 1994 and 369.299, RSMo 1971, amended 1994.*